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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित  
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नई दिल्ली, मंगलवार, मई 20, 2025/वैशाख 30, 1947

No. 10]

NEW DELHI, TUESDAY, MAY 20, 2025/VAISAKHA 30, 1947

भारत निर्वाचन आयोग सचिवालय

अधिसूचना

नई दिल्ली, 7 मई, 2025

आ. अ. 10(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 की 43) धारा 106 के अनुसरण में, भारत निर्वाचन आयोग वर्ष 2024 की निर्वाचन याचिका सं. 3 में माननीय उच्च न्यायालय पंजाब एवं हरियाणा, चण्डीगढ़ के दिनांक 13 जनवरी, 2025 के निर्णय को एतद्वारा प्रकाशित करता है।

[फा. सं. 82/ भा.नि.आ./हरि.-लो.स./3-2024/2025/हिसार]]

आदेश से,

एन.टी. भूटिया, प्रधान सचिव

## IN THE HIGH COURT OF PUNJAB AND HARYANA

## AT CHANDIGARH

## Election Petition No. 03 of 2024

Date of Decision: 13.01.2025

Raj Mahak

-Petitioner

*Versus*

Jai Parkash and others

-Respondents

**CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA**

Present Mr. Rajiv Malhotra, Advocate for the petitioner.

**ANOOP CHITKARA, J. (ORAL)**

1. Seeking setting aside of the election of the 04-Hisar Parliamentary Constituency where respondent No.1 Jai Parkash was elected as member of Parliament where result was declared on 04.06.2024, and further to order a fresh election for the same and initiating proceedings under Section 8A of the Representation of People Act, 1951 for disqualifying the elected member of Parliament i. e respondent No.1 for six years from contesting any election, for having committed a corrupt practice, the petitioner came up before this Court by filing the present Election petition under Sections 80-83 read with Section 100, 123(2) read with Section 8A of the Representation of the People Act, 1951 and all other enabling provisions.

2. The relevant portion of S. 86 Representation of the People Act, 1951, hereinafter referred to as RPA, reads as follows.

86. Trial of election petitions. -

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation. An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

3. Two separate Election Petitions were filed challenging the election of 04-Hisar Parliamentary Constituency. The said petitions were registered as EP-3 of 2024 and EP-4 of 2024

4. Vide order dated 08.08.2024, Hon'ble the Chief Justice of this Court had assigned and referred both these petitions to this Court

5. In para no.1 of the election petition, the petitioner claims that he is currently a cabinet minister in the Government of Haryana, and even earlier, he was a minister in the Haryana Government from 1987 to 1990 and was elected as a member of Rajya Sabha in 1990 and was elected as a member of the Haryana Legislative Assembly in 1987 and 2019. He also claimed that he contested as a candidate of the Bhartiya Janta Party from 04-Hisar Parliamentary Constituency in the 2024 General Elections and, therefore, is qualified under Section 81 of the Representation of People Act, 1951 and fully entitled to file the present election petition against the respondent challenging his election from 04-Hisar Parliamentary Constituency In para no.3 of the election petition, the petitioner reiterates his statement that he had filed his nomination from 04- Hisar Parliamentary Constituency as a candidate of the Bhartiya Janta Party, whereas the respondent No.1 filed his nomination from the same constituency as a candidate of the Indian National Congress on 06.05.2024. Although there are 30 respondents per the memo of parties, the petitioner did not specify which respondent had won the election. To ascertain that, reference is made to para no.8 of the election petition in which respondent No.1, who had got the highest vote, had contested from the Indian National Congress. In row no.2, the candidate of the BJP is named Ranjit Singh and not the petitioner, Raj Mahak. It will be appropriate to extract para no.8 of the election petition, which reads as follows: -

	Name of Candidate	Party	Votes
1	Jai Parkash (Respondent)	Indian National Congress	570424

2	Ranjit Singh	Bharatiya Janata Party	507043
3	Desh Raj	Bahujan Samaj Party	26015
4	Sunaina Chautala	Indian National Lok Dal	22303
5	Naina Singh Chautala	Jannayak Janta Party	22032
6	Pardeep Dahiya	Independent	3608
7	Jai Parkash (J.P.)	Independent	3273
8	Jile Singh	Independent	3196
9	Poonam Mor	Independent	1241
10	Ishwar Jhahria	Independent	1122
11	Atam Ram Bishnoi	Independent	1097
12	Kulbir	Independent	1041
13	Chander Mohan	Independent	998
14	Advocate Pardeep Sihmar	People Party of India (D)	876
15	Ajit Singh	Independent	796
16	Dev Giri	Rashtriya Lokswaraj Party	726
17	Dinesh Kumar	Independent	703
18	Master Vijender Jitpura	SUCOI(C)	657
19	Rajender Kumar	Independent	486
20	Neeraj Kumar “Chhattar”	Bharatiya Asha Party	423
21	Mandeep	Independent	405
22	Jagat Singh	Vikas India Party	382
23	Parjapati Rakesh Dhuwaria	Independent	374
24	Randhir Singh	Independent	353
25	Surender Kumar	Independent	326
26	Surender	Independent	308
27	Vijay Singh	Independent	272
28	Yogesh Boora	Independent	269
29	NOTA	-	3366
	Total		1174115

6. Perusal of the above clearly indicates that the petitioner's name does not appear in the candidate list. A perusal of the entire election petition does not mention that the petitioner had even filed his nomination papers. Thus, the contention in the opening paragraphs contradicts the petitioner's pleadings.

7. To ascertain whether the petitioner has a cause of action, whether it discloses any cause of action, and whether it deserves dismissal under Order VII Rule 11 of the Code of Civil Procedure, 1908, I have heard counsel for the petitioner and gone through the record. Its analysis would lead to the following outcome.

8. S. 81 of The Representation of the People Act, 1951, reads as follows:

81. Presentation of petitions. -

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation. - In this sub-section, “elector” means a person entitled to vote at the election to which

the election petition relates, whether he has voted at such election or not.

9. S. 83 of RPA reads as follows:

S. 83. Contents of petition. -

(1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies,

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in is support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

10. Thus, as per the mandate of S. 81 of RPA, to prima facie prove the locus standi, the person challenging any election must establish any of the following mandatory requirements of Section 81 of RPA:

(1). Petitioner must be a candidate at such an election, or

(2). Petitioner must be an elector, and an "elector" means a person entitled to vote at the election to which the election petition relates.

11. S. 86 of RPA reads as follows:

S. 86. Trial of election petitions-

(1) xxxx Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation. - An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) xxxx as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) xxxx election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) xxx

(5) xx

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

12. S. 98 of RPA reads as follows

98. Decision of the High Court. - At the conclusion of the trial of on election petition the High Court shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election, of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected

13. Order VII Rule 11 of The Code of Civil Procedure, 1908 reads as follows:

Order VII Rule 11. Rejection of plaint. - The plaint shall be rejected in the following cases: -

(a) where it does not disclose a cause of action;

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14. There is neither any averment nor any evidence of nomination, and it is also prima facie disproved by the list of contesting candidates, where the petitioner's name is not mentioned. There is also no evidence that Raj Mahak is a voter of the Hisar Parliamentary Constituency, the election he has challenged in this election petition. The voter card is not attached, and no particulars have been provided. He does not claim to be a voter of the constituency or even Haryana. There is no prima facie evidence that the petitioner is a voter of Hisar Parliamentary Constituency. Thus, the petitioner did not prima facie establish his locus; the petition lacks essential pleadings and petition is defective, and the cause of action is absent.

15. All the facts essential to clothe the petition with complete cause of action must be pleaded, and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). The Courts, in exercising their powers under the Code of Civil Procedure, 1908, have the power to take cause of action as a foundational point and, in its absence, can dismiss the Election Petition without issuing notice to the defendants (Respondents) if the court is satisfied that the petition lacks cause of action. The omission of material facts leads to an incomplete cause of action, and an election petition without the material facts is not an election petition at all. The pleadings and the attached documents lack material particulars and violate mandatory legal requirements. All the primary facts must be proved by a party to establish a cause of action or their defense are material. At the initial stage, the designated Court is under an obligation to screen the mandate of sections 81, 82, and 86 of the RPA and must reject a plaint if it does not disclose any cause of action. Since the Court must act at the threshold, this power must be exercised at the earliest stage. An election petition can be rejected at the threshold if it suffers from any such vice.

16. The above-stated legal position is fortified by the following judicial precedents, which apply to the facts of the present petition on all fours.

17. In Azhar Hussain v. Rajiv Gandhi, 1986(Supp) SCC 315, Hon'ble Supreme Court holds,

(5) Learned Counsel for the appellant has urged four submissions in support of this appeal viz:

A - Since the Act does not provide for dismissal of an election petition on the ground that material particulars necessary to be supplied in the election petition as enjoined by Section 83 of the Act are not incorporated in the election petition in as much as Section 86 of the Act which provides for summary dismissal of the petition does not advert to Section 83 of the Act there is no power in the Court trying election petitions to dismiss the petition even in exercise of powers under the CPC.

B - Even if the Court has the power to dismiss an election petition summarily otherwise than under Section 86 of the Representation of People Act, the power cannot be exercised at the threshold.

C - In regard to seven grounds of challenge embodied in paragraph 4 of the election petition viz. I, II (i, ii & iii), XIII, XIV and XV the High Court was not justified in dismissing the petition.

D - Even if the powers under the CPC can be exercised by the Court hearing election petitions worse comes to worse, an election petition may be rejected under Order 7, Rule 11 of the CPC, but in no case can it be dismissed.

[6]. GROUND A: In order to understand the plea, a glance at Sections 83 and 86(1) in so far as material is called for:

83. *Contents of petition*- (1) an election petition-

a) shall contain a concise statement of the material facts on which the petitioner relies;

b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such practice; and

c) shall be signed by the petitioner and verified in the manner laid down in the CPC, 1908 (5 of 1908) for the verification of pleadings;

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

86- *Trial of election petitions*- (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 82 or Section 117.

Explanation- An order of the High Court dismissing an election petition under this Sub-section shall be deemed to be an order made under Clause (a) of Section 98.

[7] The argument is that where the legislature wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter. The intention was to provide for summary dismissal only in case of failure to comply with the requirement of Sections 81, 82 and 117 and not Section 83.

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[8]. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have Lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable, the Court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:

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[9]. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

[10]. There is thus no substance in this point which is already concluded against the appellant in *Hardwari Lal v. Kanwal Singh*<sup>1</sup> wherein this Court has in terms negated this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three judge Bench:

The allegations in paragraph 16 of the election petition do not amount to any statement or material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.

[11]. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in *Samant case*<sup>2</sup> has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also, in *Udhav Singh case*<sup>3</sup>, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section

1. 91972] 2 SCR 742 : (1972) 1 SCC 214

2. *Samant N. Balkrishna and Anr. v. George Fernandez and Ors.*, (1969) 3 SCC 238.

3. *Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511.

83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

#### **GROUND B**

[12]. Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned Counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to wind the vote of the people but also to win the vote of the court in a long drawn out litigation before he can whole-heartedly engaged himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern metal, the constraint introduced by the pendency of an election petition may have some impact on his sub conscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to

contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.

**Last submission (Ground D supra)**

[40]. Counsel for the appellant has taken exception to the fact that the High Court has dismissed the election petition in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure notwithstanding the fact that under the said provision if the petition does not disclose cause of action it can only be rejected (and not dismissed). The contention urged by the learned Counsel would have had some significance if the impugned order was passed before the expiry of the period of limitation for instituting the election petition. In the present case the election petition was filed on the last day on which the election petition could have been presented having regard to the rigid period of limitation prescribed by Section 81 of the Act. It could not have been presented even on the next day. Such being the admitted position, it would make little difference whether the High Court used the expression 'rejected' or 'dismissed'. It would have had some significance if the petition was 'rejected' instead of being 'dismissed' before the expiry of the limitation.

18. In *V. Narayanaswamy v. C.P. Thirunavukkarasu*, (2000) 2 SCC 294, A Three-Judge Bench of Hon'ble Supreme Court holds,

[23]. It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., Clause (a) of Sub-section (1) of Section 83. Then under Clause (b) of Sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on Information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unformed under the verification clause as well as the affidavit, the unsworn allegations could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the Court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of the Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the



threshold for non-compliance with the mandatory provisions of law as to pleadings, it is no part of duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court, however cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.

19. In *Ram Sukh v. Dinesh Aggarwal*, (2009) 10 SCC 541, Hon'ble Supreme Court holds,

[12]. It is evident that controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts" required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out "material facts" in his petition?

[13]. The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or defendant's defence depends. (See *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu*<sup>4</sup>). Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

[15] At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice distinction between the phrases "material facts" as appearing in Clause (a) and "particulars as appearing in Clause (b) of Sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence "Particulars". on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that opposite party is not taken by surprise.

[18]. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order VI Rule 16 and Order VII Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the Electorate have reposed confidence in him. The submission, therefore, must fail. action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.

[19] Coming to the second limb of the argument viz., absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res integra. A similar plea was negated by a three-Judge Bench of this Court in *Hardwari Lal v. Kanwal Singh*...

20. In *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust*, (2012) 8 Supreme Court Cases 706, the Hon'ble Supreme Court holds,

[13]. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the material for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

21. In *Tej Bahadur v. Narendra Modi*, (2021) 14 SCC 211, a three-judge bench of Hon'ble Supreme Court holds,

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4. (2004) 7 SCC 181)

[24]. We find that the averments in the petition do not disclose that the Appellant has a cause of action which invest him with right to sue. It is settled that where a person has no interest at all, or no sufficient interest to support a legal claim or action he will have no locus standi to sue. The entitlement to sue or locus standi is an integral part of cause of action. In *T Arivandandam v. T.V. Satyapal*<sup>5</sup>, V.R. Krishna Iyer J., speaking for this Court held that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, it should be nipped in the bud at the first hearing.

[25]. Section 83 of the Act allows only an elector or candidate to maintain an Election Petition. Impliedly, it bars any other person from filing an Election Petition. In this sense the Election Petition can also be set to be barred by Section 81 read with Section 86(1) of the Act.

22. In *Kanimozhi Karuna Nidhi v/s A. Santhana Kumar* (2023) SCC Online SC 573, the Hon'ble Supreme Court holds,

[28]. The legal position enunciated in afore-stated cases may be summed up as under: -

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1) (d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

23. In *Rameshkumar Bapuraoji Gajbe v. The Election Commission of India and Ors...*

MANU/MH/3317/2019, Bombay High Court observed,

[14]. Section 83 of the Act mandates that the election petition shall contain a concise statement of the material facts on which the petition relies, and further necessitates the disclosure of full particulars of any corrupt practice that the petitioner alleges. It is well settled that failure to state even a single material fact may entail dismissal of the petition. Every fact which shall have to be proved to formulate a complete cause of action is a material fact. In essence, the material facts are the entire bundle of facts which would constitute a cause of action and which facts would have to be established by the petitioner to be entitled to the relief claimed

[16]. Section 86 of the Act which deals with trial of election petitions provides that the High Court shall dismiss election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. Section 86 makes no reference to Section 83(1) of the Act which mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. However, in the context of the interplay between Section 83(1) and Section 86 of the Act and the provisions of Order VI Rule 16 and Order VII Rule 11 of the Code, it is trite law that an election petition which is bereft of material fact/s would entail dismissal at the threshold on the premise that omission of a single material fact would lead to incomplete cause of action and that such petition is not an election petition at all....

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5. (1977) 4 SCC 467

24. Given this basic fundamental position before this Court is whether the respondent, including the elected representative who is discharging his public function before the constituency, be burdened to face the present trial or the election petition be scrutinized whether it passes the test of statute and judicial precedents or not.

25. A reading of the election petition indicates that it does not align with the Representation of People Act of 1951, that the petitioner has neither locus nor cause of action, and consequently, the petition is rejected under Order VII Rule 11 of the Code of Civil Procedure,

26. Given the above, the petition is defective, is rejected and accordingly dismissed.

Sd/-

(ANOOP CHITKARA)

JUDGE

13.01.2025

Jyoti Sharma

Whether speaking/reasoned	Yes
Whether Reportable	Yes

## SECRETARIAT OF THE ELECTION COMMISSION OF INDIA

### NOTIFICATION

New Delhi, the 7th May, 2025

**O. N. 10(E).**—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 13<sup>th</sup> January, 2025 of the Hon'ble High Court of Judicature of Punjab and Haryana at Chandigarh in Election Petition No. 3 of 2024

[ F. No. 82/HAR-HP/3-2024/2025/(HISAR)]

By Order,

N.T. BHUTIA, Principal Secy.

## IN THE HIGH COURT OF PUNJAB AND HARYANA

### AT CHANDIGARH

**Election Petition No. 03 of 2024**

**Date of Decision: 13.01.2025**

Raj Mahak

-Petitioner

*Versus*

Jai Parkash and others

-Respondents

**CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA**

Present Mr. Rajiv Malhotra, Advocate for the petitioner.

**ANOOP CHITKARA, J. (ORAL)**

1. Seeking setting aside of the election of the 04-Hisar Parliamentary Constituency where respondent No.1 Jai Parkash was elected as member of Parliament where result was declared on 04.06.2024, and further to order a fresh election for the same and initiating proceedings under Section 8A of the Representation of People Act, 1951 for disqualifying the elected member of Parliament i. e respondent No.1 for six years from contesting any election, for

having committed a corrupt practice, the petitioner came up before this Court by filing the present Election petition under Sections 80-83 read with Section 100, 123(2) read with Section 8A of the Representation of the People Act, 1951 and all other enabling provisions.

2. The relevant portion of S. 86 Representation of the People Act, 1951, hereinafter referred to as RPA, reads as follows.

86. Trial of election petitions. -

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation. An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

3. Two separate Election Petitions were filed challenging the election of 04-Hisar Parliamentary Constituency. The said petitions were registered as EP-3 of 2024 and EP-4 of 2024

4. Vide order dated 08.08.2024, Hon'ble the Chief Justice of this Court had assigned and referred both these petitions to this Court

5. In para no.1 of the election petition, the petitioner claims that he is currently a cabinet minister in the Government of Haryana, and even earlier, he was a minister in the Haryana Government from 1987 to 1990 and was elected as a member of Rajya Sabha in 1990 and was elected as a member of the Haryana Legislative Assembly in 1987 and 2019. He also claimed that he contested as a candidate of the Bhartiya Janta Party from 04-Hisar Parliamentary Constituency in the 2024 General Elections and, therefore, is qualified under Section 81 of the Representation of People Act, 1951 and fully entitled to file the present election petition against the respondent challenging his election from 04-Hisar Parliamentary Constituency In para no.3 of the election petition, the petitioner reiterates his statement that he had filed his nomination from 04- Hisar Parliamentary Constituency as a candidate of the Bhartiya Janta Party, whereas the respondent No.1 filed his nomination from the same constituency as a candidate of the Indian National Congress on 06.05.2024. Although there are 30 respondents per the memo of parties, the petitioner did not specify which respondent had won the election. To ascertain that, reference is made to para no.8 of the election petition in which respondent No.1, who had got the highest vote, had contested from the Indian National Congress. In row no.2, the candidate of the BJP is named Ranjit Singh and not the petitioner, Raj Mahak. It will be appropriate to extract para no.8 of the election petition, which reads as follows: -

	Name of Candidate	Party	Votes
1	Jai Parkash (Respondent)	Indian National Congress	570424
2	Ranjit Singh	Bharatiya Janata Party	507043
3	Desh Raj	Bahujan Samaj Party	26015
4	Sunaina Chautala	Indian National Lok Dal	22303
5	Naina Singh Chautala	Jannayak Janta Party	22032
6	Pardeep Dahiya	Independent	3608
7	Jai Parkash (J.P.)	Independent	3273
8	Jile Singh	Independent	3196
9	Poonam Mor	Independent	1241
10	Ishwar Jhahria	Independent	1122
11	Atam Ram Bishnoi	Independent	1097
12	Kulbir	Independent	1041
13	Chander Mohan	Independent	998
14	Advocate Pardeep Sihmar	People Party of India (D)	876

15	Ajit Singh	Independent	796
16	Dev Giri	Rashtriya Lokswaraj Party	726
17	Dinesh Kumar	Independent	703
18	Master Vijender Jitpura	SUCOI(C)	657
19	Rajender Kumar	Independent	486
20	Neeraj Kumar “Chhattar”	Bharatiya Asha Party	423
21	Mandeep	Independent	405
22	Jagat Singh	Vikas India Party	382
23	Parjapati Rakesh Dhuwaria	Independent	374
24	Randhir Singh	Independent	353
25	Surender Kumar	Independent	326
26	Surender	Independent	308
27	Vijay Singh	Independent	272
28	Yogesh Boora	Independent	269
29	NOTA	-	3366
	Total		1174115

6. Perusal of the above clearly indicates that the petitioner’s name does not appear in the candidate list. A perusal of the entire election petition does not mention that the petitioner had even filed his nomination papers. Thus, the contention in the opening paragraphs contradicts the petitioner’s pleadings.

7. To ascertain whether the petitioner has a cause of action, whether it discloses any cause of action, and whether it deserves dismissal under Order VII Rule 11 of the Code of Civil Procedure, 1908, I have heard counsel for the petitioner and gone through the record. Its analysis would lead to the following outcome.

8. S. 81 of The Representation of the People Act, 1951, reads as follows:

81. Presentation of petitions. -

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation. - In this sub-section, “elector” means a person entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

9. S. 83 of RPA reads as follows:

S. 83. Contents of petition. -

(1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies,

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in is support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

10. Thus, as per the mandate of S. 81 of RPA, to prima facie prove the locus standi, the person challenging any election must establish any of the following mandatory requirements of Section 81 of RPA:

- (1). Petitioner must be a candidate at such an election, or
- (2). Petitioner must be an elector, and an "elector" means a person entitled to vote at the election to which the election petition relates.

11. S. 86 of RPA reads as follows:

S. 86. Trial of election petitions-

(1) xxxx Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation. - An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) xxxx as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) xxxx election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) xxx

(5) xx

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

12. S. 98 of RPA reads as follows

98. Decision of the High Court. - At the conclusion of the trial of on election petition the High Court shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election, of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected

13. Order VII Rule 11 of The Code of Civil Procedure, 1908 reads as follows:

Order VII Rule 11. Rejection of plaint. - The plaint shall be rejected in the following cases: -

(a) where it does not disclose a cause of action;

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14. There is neither any averment nor any evidence of nomination, and it is also prima facie disproved by the list of contesting candidates, where the petitioner's name is not mentioned. There is also no evidence that Raj Mahak is a voter of the Hisar Parliamentary Constituency, the election he has challenged in this election petition. The voter card is not attached, and no particulars have been provided. He does not claim to be a voter of the constituency or even Haryana. There is no prima facie evidence that the petitioner is a voter of Hisar Parliamentary Constituency. Thus, the petitioner did not prima facie establish his locus; the petition lacks essential pleadings and petition is defective, and the cause of action is absent.

15. All the facts essential to clothe the petition with complete cause of action must be pleaded, and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). The Courts, in exercising their powers under the Code of Civil Procedure, 1908, have the power to take cause of action as a foundational point and, in its absence, can dismiss the Election Petition without issuing notice to the defendants (Respondents) if the court is satisfied that the petition lacks cause of action. The omission of material facts leads to an incomplete cause of action, and an election petition without the material facts is not an election petition at all. The

pleadings and the attached documents lack material particulars and violate mandatory legal requirements. All the primary facts must be proved by a party to establish a cause of action or their defense are material. At the initial stage, the designated Court is under an obligation to screen the mandate of sections 81, 82, and 86 of the RPA and must reject a plaint if it does not disclose any cause of action. Since the Court must act at the threshold, this power must be exercised at the earliest stage. An election petition can be rejected at the threshold if it suffers from any such vice.

16. The above-stated legal position is fortified by the following judicial precedents, which apply to the facts of the present petition on all fours.

17. In *Azhar Hussain v. Rajiv Gandhi*, 1986(Supp) SCC 315, Hon'ble Supreme Court holds,

(5) Learned Counsel for the appellant has urged four submissions in support of this appeal viz:

A - Since the Act does not provide for dismissal of an election petition on the ground that material particulars necessary to be supplied in the election petition as enjoined by Section 83 of the Act are not incorporated in the election petition in as much as Section 86 of the Act which provides for summary dismissal of the petition does not advert to Section 83 of the Act there is no power in the Court trying election petitions to dismiss the petition even in exercise of powers under the CPC.

B - Even if the Court has the power to dismiss an election petition summarily otherwise than under Section 86 of the Representation of People Act, the power cannot be exercised at the threshold.

C - In regard to seven grounds of challenge embodied in paragraph 4 of the election petition viz. I, II (i, ii & iii), XIII, XIV and XV the High Court was not justified in dismissing the petition.

D - Even if the powers under the CPC can be exercised by the Court hearing election petitions worse comes to worse, an election petition may be rejected under Order 7, Rule 11 of the CPC, but in no case can it be dismissed.

[6]. GROUND A: In order to understand the plea, a glance at Sections 83 and 86(1) in so far as material is called for:

83. *Contents of petition-* (1) an election petition-

- a) shall contain a concise statement of the material facts on which the petitioner relies;
- b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each of such practice; and
- c) shall be signed by the petitioner and verified in the manner laid down in the CPC, 1908 (5 of 1908) for the verification of pleadings;

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

86- *Trial of election petitions-* (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 82 or Section 117.

Explanation- An order of the High Court dismissing an election petition under this Sub-section shall be deemed to be an order made under Clause (a) of Section 98.

[7] The argument is that where the legislature wanted to provide for summary dismissal of the election petition, the legislature has spoken on the matter. The intention was to provide for summary dismissal only in case of failure to comply with the requirement of Sections 81, 82 and 117 and not Section 83.

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[8]. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have Lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable, the Court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:

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[9]. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.

[10]. There is thus no substance in this point which is already concluded against the appellant in *Hardwari Lal v. Kanwal Singh*<sup>1</sup> wherein this Court has in terms negated this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three judge Bench:

The allegations in paragraph 16 of the election petition do not amount to any statement or material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.

Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed.

[11]. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in *Samant case*<sup>2</sup> has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also, in *Udhav Singh case*<sup>3</sup>, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

#### **GROUND B**

[12]. Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned Counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or

1. 91972] 2 SCR 742 : (1972) 1 SCC 214

2. *Samant N. Balkrishna and Anr. v. George Fernandez and Ors.*, (1969) 3 SCC 238.

3. *Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511.



maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matters pertaining to ordinary Civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to wind the vote of the people but also to win the vote of the court in a long drawn out litigation before he can whole-heartedly engaged himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be entrusted with some public office in his elected capacity. He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern metal, the constraint introduced by the pendency of an election petition may have some impact on his sub conscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled.

#### **Last submission (Ground D supra)**

[40]. Counsel for the appellant has taken exception to the fact that the High Court has dismissed the election petition in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure notwithstanding the fact that under the said provision if the petition does not disclose cause of action it can only be rejected (and not dismissed). The contention urged by the learned Counsel would have had some significance if the impugned order was passed before the expiry of the period of limitation for instituting the election petition. In the present case the election petition was filed on the last day on which the election petition could have been presented having regard to the rigid period of limitation prescribed by Section 81 of the Act. It could not have been presented even on the next day. Such being the admitted position, it would make little difference whether the High Court used the expression 'rejected' or 'dismissed'. It would have had some significance if the petition was 'rejected' instead of being 'dismissed' before the expiry of the limitation.

18. In *V. Narayanaswamy v. C.P. Thirunavukkarasu*, (2000) 2 SCC 294, A Three-Judge Bench of Hon'ble Supreme Court holds,

[23]. It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., Clause (a) of Sub-section (1) of Section 83. Then under Clause (b) of Sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on Information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the Court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unformed under the verification clause as well as the affidavit, the unsworn allegations could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the Court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of the Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings, it is no part of duty of the Court suo motu even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court, however cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.

19. In *Ram Sukh v. Dinesh Aggarwal*, (2009) 10 SCC 541, Hon'ble Supreme Court holds,

[12]. It is evident that controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts" required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out "material facts" in his petition?

[13]. The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or defendant's defence depends. (See *Mahadeorao Sukaji Shivankar v.*

*Ramaratan Bapu*<sup>4</sup>). Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

[15] At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice distinction between the phrases "material facts" as appearing in Clause (a) and "particulars as appearing in Clause (b) of Sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence "Particulars". on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that opposite party is not taken by surprise.

[18]. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order VI Rule 16 and Order VII Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the Electorate have reposed confidence in him. The submission, therefore, must fail. action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.

[19] Coming to the second limb of the argument viz., absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer *res integra*. A similar plea was negated by a three-Judge Bench of this Court in *Hardwari Lal v. Kanwal Singh*...

20. In *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust*, (2012) 8 Supreme Court Cases 706, the Hon'ble Supreme Court holds,

[13]. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the material for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

21. In *Tej Bahadur v. Narendra Modi*, (2021) 14 SCC 211, a three-judge bench of Hon'ble Supreme Court holds,

[24]. We find that the averments in the petition do not disclose that the Appellant has a cause of action which invest him with right to sue. It is settled that where a person has no interest at all, or no sufficient interest to support a legal claim or action he will have no locus standi to sue. The entitlement to sue or locus standi is an integral part of cause of action. In *T Arivandandam v. T.V. Satyapal*<sup>5</sup>, V.R. Krishna Iyer J., speaking for this Court held that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, it should be nipped in the bud at the first hearing.

[25]. Section 83 of the Act allows only an elector or candidate to maintain an Election Petition. Impliedly, it bars any other person from filing an Election Petition. In this sense the Election Petition can also be set to be barred by Section 81 read with Section 86(1) of the Act.

22. In *Kanimozhi Karuna Nidhi v/s A. Santhana Kumar* (2023) SCC Online SC 573, the Hon'ble Supreme Court holds,

[28]. The legal position enunciated in afore-stated cases may be summed up as under: -

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

4. (2004) 7 SCC 181)

5. (1977) 4 SCC 467

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaintiff would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1) (d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

23. In Rameshkumar Bapuraoji Gajbe v. The Election Commission of India and Ors...

MANU/MH/3317/2019, Bombay High Court observed,

[14]. Section 83 of the Act mandates that the election petition shall contain a concise statement of the material facts on which the petition relies, and further necessitates the disclosure of full particulars of any corrupt practice that the petitioner alleges. It is well settled that failure to state even a single material fact may entail dismissal of the petition. Every fact which shall have to be proved to formulate a complete cause of action is a material fact. In essence, the material facts are the entire bundle of facts which would constitute a cause of action and which facts would have to be established by the petitioner to be entitled to the relief claimed

[16]. Section 86 of the Act which deals with trial of election petitions provides that the High Court shall dismiss election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. Section 86 makes no reference to Section 83(1) of the Act which mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. However, in the context of the interplay between Section 83(1) and Section 86 of the Act and the provisions of Order VI Rule 16 and Order VII Rule 11 of the Code, it is trite law that an election petition which is bereft of material fact/s would entail dismissal at the threshold on the premise that omission of a single material fact would lead to incomplete cause of action and that such petition is not an election petition at all....

24. Given this basic fundamental position before this Court is whether the respondent, including the elected representative who is discharging his public function before the constituency, be burdened to face the present trial or the election petition be scrutinized whether it passes the test of statute and judicial precedents or not.

25. A reading of the election petition indicates that it does not align with the Representation of People Act of 1951, that the petitioner has neither locus nor cause of action, and consequently, the petition is rejected under Order VII Rule 11 of the Code of Civil Procedure,

26. Given the above, the petition is defective, is rejected and accordingly dismissed.

Sd/-

(ANOOP CHITKARA)

JUDGE

13.01.2025

Jyoti Sharma

Whether speaking/reasoned	Yes
Whether Reportable	Yes